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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Sundaram Ramakesavan

§ Group Art Unit: 2622

Serial No.: 09/234,559

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Filed: January 20, 1999

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§

Examiner: Victor Kostak

For: System for Providing Video on Demand with
Pause Feature (as Amended)

§ Atty. Dkt. No.: ITL.0170US
(P6678)

Mail Stop **Appeal Brief**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF AMENDED APPEAL BRIEF

Dear Sir:


In response to the Notification of Non-Compliant Appeal Brief, attached hereto is an Amended Appeal Brief.

Claim 16 has been added to the Summary of Claimed Subject Matter of this Appeal Brief. Statute information has been added to the Grounds of Rejection and Arguments sections. Copies of the Decisions for related appeals have been attached in the Related Proceedings Appendix. The Amended Appeal Brief is therefore believed to be in compliance.

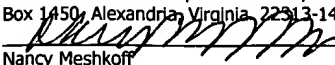
No fee is believed to be due with this response. However, the Commissioner is authorized to charge any fee due to Deposit Account No. 20-1504 (ITL.0170US).

Respectfully submitted,

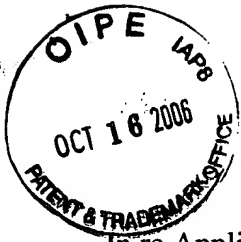
Date: October 13, 2006



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Nancy Meshkoff



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

Sundaram Ramakesavan

Serial No.: 09/234,559

Filed: January 20, 1999

For: System for Providing Video on
Demand with Pause Feature
(as amended)

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Art Unit: 2614

Examiner: Victor R. Kostak

Atty Docket: ITL.0170US
(P6678)

Assignee: Intel Corporation

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Commissioner for Patents
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AMENDED APPEAL BRIEF

Date of Deposit: October 13, 2006

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Nancy Meshkoff



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REAL PARTY IN INTEREST

The real party in interest is the assignee Intel Corporation.

RELATED APPEALS AND INTERFERENCES

Appeal No. 2002-0336, decision mailed September 10, 2003, and Appeal No. 2005-2401, decision mailed August 31, 2005, both in this case.

STATUS OF CLAIMS

Claims 1-20 (Rejected).

Claims 21-22 (Canceled).

Claim 23 (Rejected).

Claim 24 (Canceled).

Claims 25-26 (Rejected).

Claims 1-20, 23, and 25-26 are rejected and are the subject of this Appeal Brief.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

1. A receiver for receiving video information from a video transmitter comprising:
a storage medium (Figure 3, 68, specification at page 8, lines 2-4) for storing video information received by a receiver;
a decryption engine (Figure 3, 65, specification at page 6, lines 22-23) to decrypt stored video information; and
a controller (Figures 2 and 3, 65, specification at page 11, lines 11-22) to control the storage medium and the decryption engine and request decryption information for the engine, said controller to control the play of video, to receive a request to pause the play of said video and to automatically request a code to enable video play to be resumed at a later time.

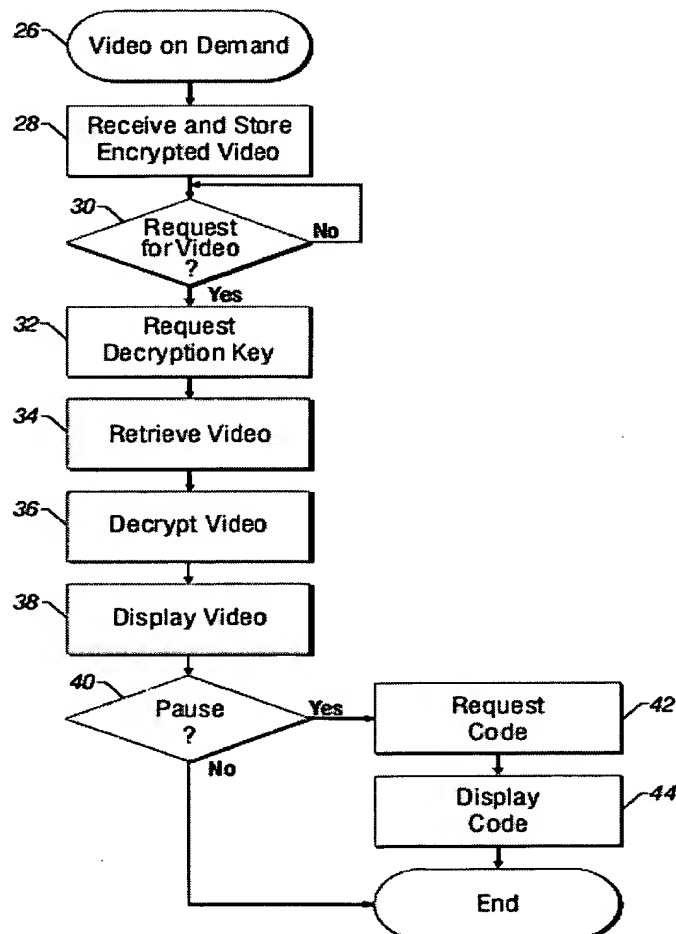


FIG. 2

4. A video transmission system comprising:
a video transmitter (Figure 1, 14, specification at page 3, lines 2-25) that transmits video to a plurality of receivers for display at a later time; and
a controller (Figure 1, 14, specification at page 7, lines 11-22) that transmits decryption information to said receivers to enable video upon request, said controller receives a request for a code to enable the play of video to be paused and to be resumed at a later time, and in response said controller automatically provides said code.

10. A method comprising:
storing encrypted video in a receiver (Figure 2, 28, specification at page 6, lines 8-10);
requesting a decryption key for said stored video (Figure 2, 32, specification at page 6, lines 15-17);
playing said video (Figure 2, 38, specification at page 6, lines 21-23);
receiving a request to pause said play of video (Figure 2, 40, specification at page 7, lines 11-14); and
automatically requesting a code to enable said video to be played at a later time (Figure 2, 42, specification at page 7, lines 11-14).

14. A video distribution method comprising:
storing video for selection by the recipient (Figure 2, 28, specification at page 6, lines 8-10);
upon request by the recipient, allowing the recipient to select for viewing a stored video (Figure 2, 30, specification at page 6, lines 15-17);
playing said video (Figure 2, 38, specification at page 6, lines 21-23); and
in response to a request to pause the play of said video, automatically requesting a code to enable play to be resumed at a later time (Figure 2, 42, specification at page 7, lines 11-14).

16. An article comprising a medium for storing instructions that cause a processor based system to:

store video for selection by the recipient (Figure 2, 28, specification at page 6, lines 8-10);

upon request by a recipient, allow the recipient to select, for viewing, video previously stored (Figure 2, 30, specification at page 6, lines 15-17);

play said video (Figure 2, 38, specification at page 6, lines 21-23); and

in response to a request to pause the play of said video, automatically request a code to enable play to be resumed at a later time (Figure 2, 42, specification at page 7, lines 11-14).

17. An article comprising a medium for storing instructions that cause a processor based system to:

store encrypted video to a receiver (Figure 2, 28, specification at page 6, lines 8-10);

request a decryption key, for said stored video (Figure 2, 30, specification at page 6, lines 15-17);

play said video (Figure 2, 38, specification at page 6, lines 21-23);

receive a request to pause said play of video; and

automatically request a code to enable said video to be played at a later time (Figure 2, 42, specification at page 7, lines 11-14).

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Do claims 1-20, 23, and 25-26 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph?**
- B. Do claims 1-20, 23, and 25-26 fail to comply with the enablement requirement under 35 U.S.C. § 112, first paragraph?**

ARGUMENT

A. Do claims 1-20, 23, and 25-26 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph?

After having been reversed in two separate appeals, and having issued some eight briefs, communications, or rejections, the examiner has now determined that there is an issue under the written description requirement. This was raised for the first time in response to the Board's second decision on appeal, reversing prior art rejections propounded by the examiner since 1999.

Surprisingly the examiner now suggests that an amendment dated June 26, 2000, some six years ago, added language to all six claims covering "automatic requests" that were neither covered nor derivable from the original disclosures. Of course this position is completely unsupportable.

The application discloses doing what is claimed using software. Necessarily that involves automatic operation. The claim language calls for automatically requesting a code to enable video play to be resumed at a later time. The specification, page 7, lines 11-16 specifically provides how software implements the claimed automatic operation. If the user wishes to pause the ongoing video transmission, as indicated and determined in diamond 40 in the software flow, a signal may be sent over a back channel to the video provider 14 requesting a pause authorization. The video provider responds by providing an acknowledgement number as indicated in block 44. It is clear that this is done automatically in response to the request to pause video.

Therefore this rejection should be reversed.

B. Do claims 1-20, 23, and 25-26 fail to comply with the enablement requirement under 35 U.S.C. § 112, first paragraph?

The same claims are also rejected under the enablement requirement. The assertion is that it is not clear from the claim context in the light of the original disclosure how the system can automatically request a code. Not only would one skilled in the art know how to do this once the idea was posed to him or her, but the specification provides the pertinent information anyway. In

response to the request for video, the system automatically requests a code and receives it from the provider as explained in the material cited above. While manual prompting may initiate an action that results in the automatic request for the code, there is nothing non-automatic about this automatic request. In other words, when the user pauses the video, the system automatically obtains the code for the user to enable the user to return to play the video from the point where the pause was implemented.

The quibble that the specification does not explain what the code is deliberately misses the point. The code can be any code that would not be known by an intruder. The idea is to get a code which recognizes that the user is entitled to restart the play of video. What that code is is of no significance to anyone skilled in the art.

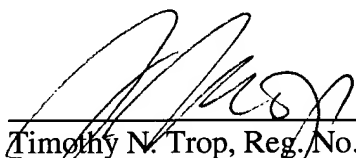
The assertions of indefiniteness under an enablement are misplaced and are not addressed here because they are clearly improperly posed. Moreover, they are facially defective. The assertions that these issues are not a minor matter is certainly belied by the fact that the examiner has repeatedly acted on this case for six years without ever noticing this allegedly non-minor matter, until the examiner was reversed twice by the Board of Appeals.

Reversal would again be appropriate.

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: October 13, 2006



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Attorneys for Intel Corporation

CLAIMS APPENDIX

The claims on appeal are:

1. A receiver for receiving video information from a video transmitter comprising:
a storage medium for storing video information received by a receiver;
a decryption engine to decrypt stored video information; and
a controller to control the storage medium and the decryption engine and request decryption information for the engine, said controller to control the play of video, to receive a request to pause the play of said video and to automatically request a code to enable video play to be resumed at a later time.
2. The receiver of claim 1 wherein said controller includes a processor.
3. The receiver of claim 1 wherein said engine is adopted to decrypt stored video upon receipt of a request to view stored video.
4. A video transmission system comprising:
a video transmitter that transmits video to a plurality of receivers for display at a later time; and
a controller that transmits decryption information to said receivers to enable video upon request, said controller receives a request for a code to enable the play of video to be paused and to be resumed at a later time, and in response said controller automatically provides said code.
5. The system of claim 4 wherein said controller also is adapted to transmit an identifier which identifies a particular receiver to receive said decryption information.
6. The system of claim 5 wherein said controller is part of said transmitter.

7. The system of claim 4 wherein said video transmitter transmits video over a cable system.

8. The system of claim 4 wherein said video transmitter transmits video over a satellite system.

9. The system of claim 4 wherein said transmitter also transmits information to assist in locating particular video files transmitted by said transmitter to said receivers.

10. A method comprising:
storing encrypted video in a receiver;
requesting a decryption key for said stored video;
playing said video;
receiving a request to pause said play of video; and
automatically requesting a code to enable said video to be played at a later time.

11. The method of claim 10 including receiving the encrypted video from one source and receiving the decryption key from a second source.

12. The method of claim 10 including receiving the video and said decryption key from the same source.

13. The method of claim 10 including receiving an identifier to identify a particular receiver to receive said key.

14. A video distribution method comprising:
storing video for selection by the recipient;
upon request by the recipient, allowing the recipient to select for viewing a stored video;
playing said video; and

in response to a request to pause the play of said video, automatically requesting a code to enable play to be resumed at a later time.

15. The method of claim 14 including providing a graphical user interface which displays the video information which is available for selection by the user.

16. An article comprising a medium for storing instructions that cause a processor based system to:

store video for selection by the recipient;

upon request by a recipient, allow the recipient to select, for viewing, video previously stored;

play said video; and

in response to a request to pause the play of said video, automatically request a code to enable play to be resumed at a later time.

17. An article comprising a medium for storing instructions that cause a processor based system to:

store encrypted video to a receiver;

request a decryption key, for said stored video;

play said video;

receive a request to pause said play of video; and

automatically request a code to enable said video to be played at a later time.

18. The article of claim 17 including instructions that cause a processor based system to receive the encrypted video from one source and receive the decryption key from a second source.

19. The article of claim 17 including instructions that cause a processor based system to receive the video and said decryption key from the same source.

20. The article of claim 17 including instructions that cause a processor based system to receive an identifier to identify a particular receiver to receive said key.

23. The method of claim 22 wherein using said acknowledgement number includes using said acknowledgement number to resume the play of video without an additional charge.

25. The method of claim 24 further including receiving a key to enable decryption of the video.

26. The method of claim 25 including resuming the play of video from the point where the video play was paused.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

See Decision on Appeal No. 2002-0336, mailed September 10, 2003, and Decision on Appeal No. 2005-2401, decision mailed August 31, 2005, both in this case.



ITL 017045

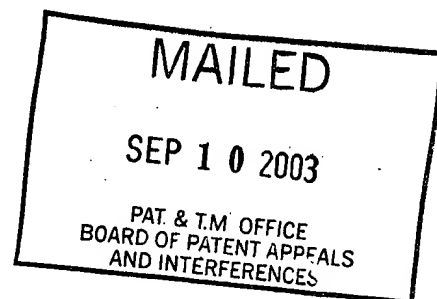
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCESEx parte SUNDARAM RAMAKESAVANAppeal No. 2002-0336
Application No. 09/234,559

ON BRIEF

Before THOMAS, KRASS, and GROSS, Administrative Patent Judges.KRASS, Administrative Patent Judge.DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-26, directed to a system for providing video on demand.

RECEIVED
SEP 15 2003

Trop, Pruner, & Hu, P.C.

DOCKET INFORMATION

Base Rate: 9-10-03Due Date: 10-10-03Action: Status Inquiry - Action from Examiner

<input checked="" type="checkbox"/> Docket	<input checked="" type="checkbox"/> Excel	<input type="checkbox"/> Access
<input type="checkbox"/> Pat. App	<input type="checkbox"/> Abst./Title Pg	<input type="checkbox"/> Draw. [I/F]

In particular, when a user wishes to pause the play of a video, a controller receives the request to pause and automatically requests a code to enable video play to be resumed at a later time.

Representative independent claim 1 is reproduced as follows:

1. A receiver for receiving video information from a video transmitter comprising:
 - a storage medium for storing video information received by a receiver;
 - a decryption engine to decrypt stored video information; and
 - a controller to control the storage medium and the decryption engine and request decryption information for the engine, said controller to control the play of video, to receive a request to pause the play of said video and to automatically request a code to enable video play to be resumed at a later time.

The examiner relies on the following reference:

Russo

6,025,868

Feb. 15, 2000
(filed Apr. 7, 1997)

Claims 1-26 stand rejected under 35 U.S.C. §103 as unpatentable over Russo.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

It is the examiner's position that Russo arranges a video-on-demand system which involves billing, wherein the programs which are user-selected are stored at the user's station, a storage medium 110 and a decrypting engine (descrambling element 114). The program reproduction is carried out using various user interfaces which access a controller 150 by a control bus 154 and a data bus 152 (see Paper No. 5, page 2).

While Russo does not explicitly disclose the claimed "pause" feature, the examiner contends that such a feature is suggested by Russo since Russo "accounts for the situation where if the viewer cannot finish a program for viewing once it has been selected, the system will keep track of where the user left off and pick up at that point (col. 11, lines 14-17), which essentially describes a pause-type condition" (Paper No. 5-page 2).

We agree with the examiner that Russo clearly suggests a "pause" feature, permitting a user to restart the program at the point where the user left off. However, the instant claims do not merely require a "pause" feature. They require a specific way to restart the program at a later time, after the pause. In particular, each of the claims on appeal requires a controller to request a "code" to enable video play at a later time.

While the examiner does not contend that Russo discloses such a "code," the examiner does contend that it would have been "obvious to consider such a feature as a pause function, whereby the controller 150 would recognize this command by an inherent code, as a separate command from a resume or play command..." (Paper No. 5-page 2, emphasis added).

The mere fact that a certain thing MAY result from a given set of circumstances is not sufficient to establish inherency. In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993). The examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teaching of the prior art. Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Interf. 1990).

The examiner has not shown that the use of a code for pausing and restarting a video, especially automatically requesting a code, is inherent in Russo because there may be many different ways to achieve Russo's intended result, i.e., to suspend playback and resume playback at a later time without additional charge, without resorting to the use of a code, as claimed. Accordingly, since the use of such a "code" is not the only way in which the claimed result may be achieved, and there are other ways to implement the pause and restore features, the examiner has not established a reasonable case for a conclusion of inherency. In fact, even if the use of a "code" for enabling video play to be resumed could be considered inherent, the claims require the controller to "automatically request a code..." and the "automatic" request for such a code has not been shown to be suggested by Russo nor has such an "automatic" request been shown by the examiner to be inherent in any way.

The examiner's response, at pages 5-7 of the answer, as to what Russo "*must*" be doing, even though Russo does not disclose these things, is mere speculation upon which a valid rejection under 35 U.S.C. §103 may not be based.

Since the automatic retrieval of a code to enable video play to be resumed at a later time does not necessarily flow from Russo's teaching of suspending a playback

The examiner's decision rejecting claims 1-26 under 35 U.S.C. §103 is reversed.

JAMES D. THOMAS
Administrative Patent Judge

BOARD OF PATENT
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AND
INTERFERENCES

Anita Pellman Gross
ANITA PELLMAN GROSS
Administrative Patent Judge

Appeal No. 2002-0336
Application No. 09/234,559

Page 7

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ITL 012045
P6678



The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

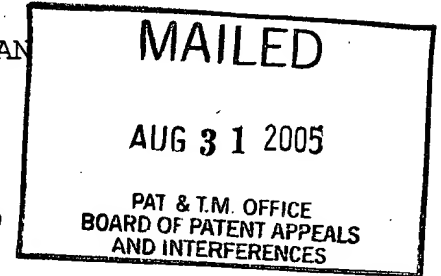
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BEFORE THE BOARD OF PATENT APPEALS
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Trop, Pruner, & Hu, P.C.

Ex parte SUNDARAM RAMAKESAVAN



Mail Date 8-31-05 Appeal No. 2005-2401
Due Date 10-31-05 Application No. 09/234,559
Act. Req. Status Inquiry due

ON BRIEF

TPHD ☒ TPHA ☐ ITLD ☒

Before THOMAS, KRASS, and GROSS, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from twice-rejected claims 1-26.

The invention is directed to a video-on-demand system. In particular, when a user wishes to pause the play of a video, a controller receives the request to pause and automatically requests a code to enable video play to be resumed at a later time.

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Application No. 09/234,559

Representative independent claim 14 is reproduced as follows:

14. A video distribution method comprising:
storing video for selection by the recipient;
upon request by the recipient, allowing the recipient to
select for viewing a stored video;
playing said video; and
in response to a request to pause the play of said video,
automatically requesting a code to enable play to be resumed at a
later time.

The examiner relies on the following references:

Dan et al. (Dan)	5,453,779	Sep. 26, 1995
Saward	5,537,473	Jul. 16, 1996

Claims 14 and 16 stand rejected under 35 U.S.C. § 102(b) as
anticipated by Dan.

Claims 15 and 24 stand rejected under 35 U.S.C. § 103 as
unpatentable over Dan.

Claims 1-13, 17-23, 25, and 26 stand rejected under 35 U.S.C.
§ 103 as unpatentable over Dan in view of Saward.

Appeal No. 2005-2401
Application No. 09/234,559

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

At the outset, we note that there is a prior Board decision (Appeal No. 2002-0336, September 10, 2003) regarding the subject matter of the instant case. In that decision, we reversed the examiner because we found that the automatic retrieval of a code to enable video play to be resumed at a later time did not necessarily flow from the teachings of the reference applied in that case. The instant case involves different prior art references applied against the claims.

We turn, first, to the rejection of claims 14 and 16 under 35 U.S.C. § 102(b).

A rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the

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Application No. 09/234,559

invention without undue experimentation. In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

It is the examiner's position that Dan anticipates claims 14 and 16 for the reasons set forth at page 2 of the Office action of February 17, 2004. In particular, regarding the "automatically requesting a code to enable play..." limitation, the examiner specifically points to column 2, lines 46-49, and the flowchart of Figure 5, of Dan.

Appellant never responds to the rejection under 35 U.S.C. § 102(b), not in the principal brief nor, even after the examiner pointed this lapse out in the answer, in the reply brief.

While this would normally result in an automatic affirmance of the examiner's decision, assuming a prima facie case has been established by the examiner, we will treat all of the claims together, and respond to appellant's singular argument throughout the briefs, since that argument comprises an assertion that the claimed "automatically requesting a code..." is not made obvious (and, presumably, not anticipated) by Dan.

Thus, the outcome of this case will rest on whether "automatically requesting a code..." is disclosed, either explicitly, or inherently, by Dan.

While Dan does not explicitly mention any "code," the examiner contends that Dan "would receive a code...because it is locked in a pause mode and must be activated by the server to unlock it for resumption of play" (answer-pages 8-9).

Since Dan does not explicitly mention any "code," as claimed, in order for the anticipation rejection to stand, this "code" must be inherent in Dan. To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.' In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) citing Continental Can Co. v. Monsanto Co., 948 F.3d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. Id. at 1269, 20 USPQ2d at 1749

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Application No. 09/234,559

(quoting In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981)).

Thus, if there is another way, besides issuing a "code," that Dan could resume the playing of a video after a pause, one would be hard-pressed to contend that the automatic request of a "code," to enable play at a later time as required by the instant claims is inherent in Dan.

Appellant gives one example of an alternative, at page 2 of the reply brief, surmising that Dan could very well maintain the connection, and, when the user chooses to start playback again, the information that has been stored or which is still available, may be provided to the receiver without requiring a code to identify the receiver. We find that this may be a possible alternative and that, therefore, one may not contend that the claimed automatic request for a code is "inherent" or "implicit" in Dan because appellant has shown that the request for such a code must not necessarily follow in Dan.

Accordingly, while there is a possibility that the examiner's assumption of an automatic request for a code in Dan may be correct, we cannot sustain a rejection based on anticipation or

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Application No. 09/234,559

obviousness on mere speculation, or assumption. We must have evidence on which to base an affirmance of such rejections. While the examiner has cited very relevant art and we truly appreciate the examiner's creativity in attempting to establish a suggestion in the prior art for the claimed automatic request of a code, we find that there just is not enough evidence in the cited art for concluding that this specific claim limitation is taught or suggested.

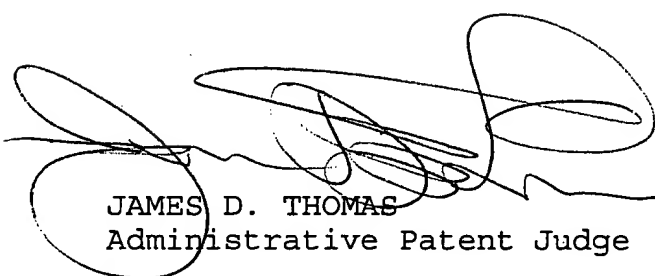
Accordingly, we will not sustain the rejection of claims 14 and 16 under 35 U.S.C. § 102(b).

Moreover, since all of the independent claims contain the limitation of automatically requesting a code to enable play to be resumed at a later time, and we find no suggestion in either Dan or Saward for such a feature, we will also not sustain the rejection of claims 1-13, 15, and 17-26 under 35 U.S.C. § 103.


Appeal No. 2005-2401
Application No. 09/234,559

Accordingly, the examiner's decision is reversed.


REVERSED



JAMES D. THOMAS
Administrative Patent Judge



ERROL A. KRASS
Administrative Patent Judge



ANITA PELLMAN GROSS
Administrative Patent Judge

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EAK/dal

Appeal No. 2005-2401
Application No. 09/234,559

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